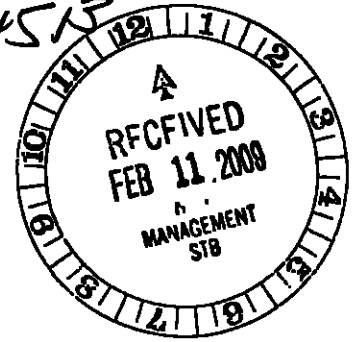


224513
CAROL PRICE DILLINGHAM, LLC
Attorney and Counselor at Law
1711 S. Pickard Avenue
Norman, OK 73072
Phone (405) 826-7160
Fax (405) 292-5465



February 10, 2009

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re STB Finance Docket No 35164
BNSF Railway Company – Petition for Declaratory Order

Dear Secretary Quinlan

I am enclosing on behalf of Oklahomans for New Transportation Alternatives Coalition ("ONTRAC") a letter to the Board in response to the letter dated January 30, 2009 from Oklahoma Department of Transportation ("ODOT") Director Gary M. Ridley to the Board

Service upon the parties has been made as noted in the Certificate of Service

If you have any questions concerning this matter, please let me know

Respectfully,

Carol Price Dillingham

Enclosure

Cc Kristy D. Clark
Michael D. Clover
Mary Francis
Eric M. Hocky
Fritz R. Kahn
Edwin Kessler
Thomas F. McFarland
Allen Parleir
Cindy S. Rosenthal
Randy Terrill
Robert M. Waldrop

ENTERED
Office of Proceedings
FEB 11 2009
Part of
Public Record



**OKLAHOMANS
FOR NEW
TRANSPORTATION
ALTERNATIVES
COALITION**

***Ensuring Oklahoma's
Rail Transit Future***

Executive Board

Charles Wesner
Chair,
Political Director,
Retired DDS

Wallace Collins
Political Director,
Oklahoma State Representative

Mary Francis
Development Director,
*Retired Educator &
NPR Commentator*

Marion Hutchison
Communications Director,
*President, Titan Energy
Corporation*

Tom Sherman
Economic Director,
*Assistant Senior Vice President,
McClain Bank*

Tom Elmore
Technical Director,
*Director, North American
Transportation Institute*

O Gail Poole
Historical Director,
Artist and Graphic Designer

February 10, 2009

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street SW
Washington, D C 20024

**Re: STB Finance Docket No. 35164
BNSF Railway Company – Petition for Declaratory Order**

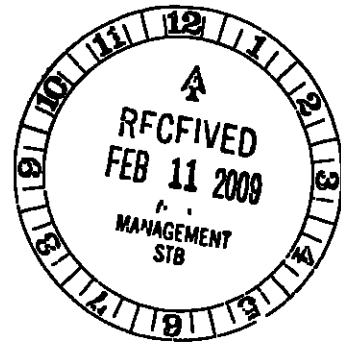
Dear Secretary Quinlan

I am writing in response to the letter dated January 30, 2009 from Oklahoma Department of Transportation (ODOT) Director Gary M. Ridley to the Surface Transportation Board requesting the Board to expeditiously issue its decision in the above referenced matter.

In his letter, Mr. Ridley seems to imply that the Board's failure to immediately issue a decision in favor of BNSF's petition poses an immediate and serious threat to public safety due to the continued use of the existing I-40 Crosstown Expressway, which he seems to suggest is in imminent danger of collapse.

On the contrary, Mr. Ridley has made official statements in the last year confirming that the existing I-40 Crosstown Expressway will safely serve the public until at least 2012. Attached please find an Associated Press article dated October 10, 2008 from the Daily Commercial News and Construction Record in which Mr. Ridley answers "Absolutely" when asked if the expressway will last until 2012. Mr. Ridley also states "it is highly unlikely" the expressway could collapse and that he travels on it to and from work. Further, Mr. Ridley says, "If we felt there was anything wrong that would cause us concern, we would close it, and we wouldn't think twice about it."

Mr. Ridley also seems to demand that the STB issue an immediate ruling in favor of BNSF or else become responsible for the public safety issues, financial losses and construction delays associated with ODOT's federal highway project. The fact of the matter is that ODOT and BNSF took a calculated risk when they made the decision to move forward with abandoning the rail line in question, re-routing rail service onto the Packerstown Lead, and constructing the new Crosstown Expressway prior to the Board issuing a decision in the matter. Accordingly, the fault lies with ODOT and BNSF, not with the Board. ODOT is solely responsible for the current situation in which it finds itself with regard to the abandonment issue, and its failings and any potential financial or other consequences of its actions should not be a consideration in the Board's decision-making process.



OnTrac, STB
February 10, 2009

Unfortunately, ODOT's and BNSF's unauthorized abandonment and re-routing action has already created a serious bottleneck for rail traffic. For the first time, freight trains that previously moved through Oklahoma City without delay by way of the Chickasha Subdivision must now contend with transferring onto BNSF's busy Red Rock Subdivision and utilizing the Packingtown Lead. Contrary to BNSF's and ODOT's assertions that the abandonment of a critical section of the Chickasha Subdivision and the re-routing of rail service onto the Packingtown Lead would not adversely affect overhead traffic, the actual situation on the ground has proven those claims to be false and misleading.

OnTrac members making onsite observations of reported rail service disruptions caused by the unauthorized abandonment and re-routing action have documented instances of overhead traffic experiencing lengthy delays while waiting for clearance to transfer onto the Red Rock Subdivision. In one such case, observers witnessed two freight trains simultaneously at a standstill for more than two hours waiting to transfer onto the Red Rock Subdivision from the east and the west. Both trains were blocked from transferring by a third train that was at a standstill on the Red Rock Subdivision. That train was blocking access to the Red Rock Subdivision from the east via the Chickasha Subdivision and Shields Spur and from the west via the Packingtown Lead (see attached Verified Statement).

OnTrac respectfully requests that the Board review this matter in a prudent and judicious manner and issue its decision only after full and careful consideration of all relevant facts in the case and all legal issues under the Board's jurisdiction.

Thank you for your consideration in these matters.

Respectfully,



Charles Wesner
Executive Board Chair
405-321-2204

Attachments

Before the
SURFACE TRANSPORTATION BOARD
STB Finance Docket No. 35164
BNSF RAILWAY COMPANY – PETITION FOR DECLARATORY ORDER

DAILY COMMERCIAL NEWS
AND CONSTRUCTION RECORD

LATEST NEWS >

Roadbuilding | Concrete | Professional Services

October 10, 2008

Oklahoma Transportation Commission approves \$4-billion infrastructure improvement program

OKLAHOMA CITY

The Oklahoma Transportation Commission approved a \$4 billion program this week to improve roads, replace 449 deficient bridges and finish relocating downtown's busy, trouble-prone Crosstown Expressway

This provides the final \$194 million needed to push the Crosstown, an elevated section of Interstate 40, south to an alignment along the Oklahoma River, opening up land for development between the shore and the city's core. The highway will also be expanded to 10 lanes. The project is to be finished in 2012.

Over the last several years, the Crosstown has undergone frequent repairs. Holes sometimes open in the road deck, dropping concrete to the ground below.

Will the expressway last until 2012?

"Absolutely," Transportation Director Gary Ridley said. Inspection teams monitor the Crosstown almost daily. Any danger of it collapsing?

"I'm not going to say that it's impossible, but I am going to say it is highly unlikely," Ridley said. He said he travels on it to and from work.

"If we felt there was anything wrong that would cause us concern, we would close it, and we wouldn't think twice about it."

Originally built in 1965, the expressway carries 120,000 vehicles a day, almost 50,000 more than the intended capacity of 72,000.

All 77 counties have projects in the construction plan, which covers the next eight years.

Ridley said the plan was made possible because of legislation approved this year increasing the budget of the Oklahoma Department of Transportation by \$30 million each year until the extra funding hits \$370 million.

Lawmakers also approved \$300 million in bonds to keep ODOT's work on track.

Other highlights of the plan are:

- 95 miles of concrete and cable barriers on highway medians
- 460 miles of improvements on two-lane roads
- \$2.1 billion of major improvements to high-volume highways
- Reconstruction of high-volume roads including projects on Interstate 44 from Riverside to Yale and U.S. 412 in Tulsa and along Interstate 35 in Norman.

Ridley called it a "conservative plan" that counts on federal funding of 60 per cent on the projects and has a 6 per cent built-in inflation factor.

Federal funding has paid for 85 to 90 per cent of Oklahoma highway projects over the last five years.

The plan includes \$16 million to "get the ball rolling" on a huge project to rehabilitate Interstate 244 over the Arkansas River in Tulsa, Ridley said.

It also includes two \$13 million projects to replace bridges on I-40 west of Oklahoma City and \$33 million for bridge replacement in Craig, Grant, Logan, Noble, Seminole and Wagoner Counties.

ASSOCIATED PRESS



500 Hood Rd, 4th Flr., Markham, ON L3R 9Z3
Phone 905-752-5408 | Fax 905-752-5450
Toll free 800-465-6475 | Toll free Fax 888-396-9413
E-mail jcnoon@reedbusiness.com

**Before the
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35164

BNSF RAILWAY COMPANY – PETITION FOR DECLARATORY ORDER

**VERIFIED STATEMENT OF
MARION F. HUTCHISON II**

My name is Marion F. Hutchison II. I am a member of Oklahomans for New Transportation Alternatives Coalition (OnTrac). I am over the age of 18 and legally qualified to make this Statement. My contact information is: Phone 405-205-2458, Address 5220 Montrose Circle, Norman, OK 73072.

1 Between the approximate hours of 11:00 am and 1:00 pm on January 9, 2009, I observed and photographed a significant delay of overhead rail traffic affecting multiple trains attempting to transfer onto the BNSF Railway Company's (BNSF) Red Rock Subdivision in Oklahoma City, Oklahoma.

2 During that time, I observed and photographed a freight train at a standstill on the Red Rock Subdivision. The train was approximately three-quarters of a mile in length and it occupied the Red Rock Subdivision from several hundred yards north of the Shields Spur connection to several hundred yards south of the Packingtown Lead connection. The train was simultaneously blocking access to the Red Rock Subdivision by overhead traffic eastbound on the Packingtown Lead and by overhead traffic southbound on the Shields Spur, which provides access to and from the Chickasha Subdivision east of the Red Rock Subdivision. The train was at a standstill for more than two hours.

3 During that time, I also observed and photographed an eastbound Stillwater Central Railroad (SLWC) freight train at a standstill on the Packingtown Lead just west of Walker Avenue (approximately one-half mile west of the Redrock Subdivision connection). The train was blocked from transferring onto the Red Rock Subdivision by the train described above in paragraph 2. The SLWC train was at a standstill and delayed for more than two hours.

4 During that time, I further observed and photographed a southbound BNSF freight train at a standstill on the Shields Spur just north of where it connects to the Red Rock Subdivision. The train was blocked from transferring onto the Red Rock Subdivision by the train described above in paragraph 2. The train was at a standstill and delayed for more than two hours.

5. The three trains described above in paragraphs 2, 3 and 4 were simultaneously at a standstill

6 The two trains described above in paragraphs 3 and 4 were simultaneously blocked and delayed from transferring onto the Red Rock Subdivision for more than two hours

VERIFICATION

I hereby verify under penalty of perjury that the foregoing Verified Statement is true and correct to the best of my knowledge and recollection

Executed this 10th day of February 2009


Marion F Hutchison II

ACKNOWLEDGEMENT

State of Oklahoma)
) SS
County of Cleveland)

Subscribed and sworn before me by Marion F Hutchison II this 10th day of February 2009


Notary Public

My Commission Expires

21 SEPTEMBER 2010

(Seal)



OnTrac, STB
February 10, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of February, 2009, a copy of the foregoing reply of Oklahomans for New Transportation Alternatives Coalition ("ONTRAC") was mailed by first class mail, postage prepaid, to the following parties of record

Kristy D Clark
BNSF Railway Company
P O Box 961039
Fort Worth, TX 76131-2828

Michael D Clover
Shawnee Economic Development Foundation
128 N Broadway
Shawnee, OK 74801

Mary Francis
850-C Cardinal Creek Condominiums
Norman, OK 73072-8016

Eric M Hocky
Thorp, Reed & Armstrong, LLP
One Commerce Square
2005 Market Street, Suite 1910
Philadelphia, PA 19103

Fritz R Kahn
Fritz R Kahn, PC
1920 N Street NW, 8Th Floor
Washington, DC 20036-1601

Edwin Kessler
1510 Rosemont Drive
Norman, OK 73072

OnTrac, STB
February 10, 2009

CERTIFICATE OF SERVICE (Continued)

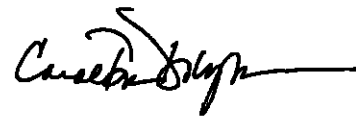
Thomas F McFarland
Thomas F McFarland, PC
208 South LaSalle Street, Suite 1890
Chicago, IL 60604

Allen Parleir
1005 NW 32nd
Oklahoma City, OK 73118

Mayor Cindy S Rosenthal
The City Of Norman
P O Box 370
Norman, OK 73069

Honorable Randy Terrill
Oklahoma State House Of Representatives
State Capitol, Room 407
Oklahoma City, OK 73105

Robert M Waldrop
Oscar Romero Catholic Worker House
1524 NW 21st
Oklahoma City, OK 73106



Carol Price Dillingham